

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ARCELIA ZAMORA,

x

Plaintiff,

:

v.

Civil Action No. 1:14-cv-234

:

GE CAPITAL RETAIL BANK,

:

Defendant.

:

SYNCHRONY BANK,

x

f/k/a GE CAPITAL RETAIL BANK,

:

Third-Party Plaintiff,

:

v.

:

JANNIE DOMINGUEZ,

:

Third-Party Defendant.

x

**DEFENDANT SYNCHRONY BANK'S BRIEF IN SUPPORT OF ITS MOTION FOR
LEAVE TO JOIN THIRD-PARTY DEFENDANT JANNIE DOMINGUEZ**

Synchrony Bank, f/k/a GE Capital Retail Bank (“Synchrony Bank” or “Defendant”), by and through counsel, pursuant to Federal Rule of Civil Procedure 14(a), hereby moves for leave to join Third-Party Defendant Jannie Dominguez (“Ms. Dominguez”) and file the Third-Party Complaint attached hereto as Exhibit 1. In support thereof, Synchrony Bank states as follows:

Facts Common to the Third-Party Complaint

1. On April 9, 2014, Plaintiff Arcelia Zamora (“Ms. Zamora” or “Plaintiff”) filed her Complaint against Defendant alleging violations of the Telephone Consumer Protection Act, 47

U.S.C. § 227, *et seq.*, for phone calls allegedly placed to her cellular telephone without her consent using an automatic telephone dialing system. (*See* Compl., D.E. 1.)

2. In her Complaint, Plaintiff alleges that Defendant was attempting to call and reach Plaintiff's daughter. (*Id.* at ¶ 7.)

3. In fact, Plaintiff's daughter is Ms. Dominguez, a Synchrony Bank customer. On August 3, 2013, Ms. Dominguez entered into a contract to open a CareCredit Account xxxx-xxxx-xxxx-5326 (the "Account") in her own name.

4. In her application for the Account, Ms. Dominguez provided Synchrony Bank with the cellular telephone number xxx-xxx-2774 as the contact number for the Account and authorized Synchrony Bank to contact Ms. Dominguez at that number.

5. Ms. Dominguez was provided a credit card along with a CareCredit Credit Card Account Agreement (the "Cardholder Agreement") that governed the Account and became effective upon her use of the Account. Under the terms of the Cardholder Agreement, Ms. Dominguez agreed, *inter alia*, to make regular monthly payments. She also consented to receiving calls at the cellular telephone number she provided and agreed to notify Synchrony Bank if she changed her phone number.

6. When the Account became delinquent, Synchrony Bank called Ms. Dominguez at the phone number she had provided on her CareCredit application concerning the delinquency on the Account.

7. According to Ms. Zamora's Complaint, however, the telephone number provided by Ms. Dominguez on the CareCredit application belonged to Ms. Zamora (her mother), and Synchrony Bank was not authorized to contact Ms. Dominguez at the telephone number.

Argument

8. Federal Rule of Civil Procedure 14 permits a Defendant “to serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Fed. R. Civ. Pro. 14(a)(1). The rule is liberally interpreted. *TIB – The Independent BankersBank v. Hometown Bank, N.A.*, No. 3:13-cv-2825-M, 2013 WL 6159310, at 2 (N.D. Tex. Nov. 25, 2013).

9. Here, if Ms. Zamora’s allegations in her Complaint are true, then Ms. Dominguez’s representations that she had authority to authorize Synchrony Bank to contact her at phone number xxx-xxx-2774 were false.

10. Mr. Zamora owed a duty to Synchrony Bank not to provide false, deceptive, or misleading information, and failed to exercise sufficient or competent care when she provided her mother’s phone number and communicated to Synchrony Bank that it was authorized to contact Ms. Dominguez at that telephone number. If Ms. Zamora’s allegations in her Complaint are true, then Ms. Dominguez’s breach of duty will have proximately caused actual damages to Synchrony Bank.

11. Additionally, if Ms. Zamora’s allegations in her Complaint are true, Ms. Dominguez breached her obligations under the Cardholder Agreement by providing inaccurate contact information when applying for the Account and/or failing to correct or update her telephone number.

12. Ms. Dominguez is therefore liable to Synchrony Bank for all or part of Ms. Zamora’s claims.

13. Because “there is a significant nexus between the underlying facts at issue” in Ms. Zamora’s Complaint and the Third-Party Complaint, and because the two disputes involve

“substantially the same facts,” Synchrony Bank has satisfied the requirements of Rule 14. *See TIB – The Independent BankersBank*, 2013 WL 6159310, at 2.

14. Further, granting this motion will not prejudice Ms. Zamora, as the discovery phase of this litigation has only just begun. Moreover, the parties have not yet exchanged any written discovery requests.

15. Indeed, pursuant to the Joint Rule 26(f) Report (D.E. 13) and Court Order Approving Joint Rule 26(f) Report (D.E. 14), the parties specifically authorized Synchrony Bank until August 22, 2014, to request leave to join additional parties or amend pleadings.

16. Granting this motion will also support judicial economy because there is substantial overlap in the operative facts of the two lawsuits, and joinder will permit the parties to develop one, common factual record and avoid piecemeal litigation or disparate findings of fact or law.

PRAYER

WHEREFORE, Synchrony Bank respectfully requests that this Court grant its Motion for Leave to Join Third-Party Defendant Jannie Dominguez.

Dated: August 22, 2014

Respectfully submitted,

By: /s/ Michael H. Bernick
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*Attorney-in-Charge for
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2014, I electronically filed the foregoing Brief in Support of Defendant's Motion for Leave to Join Third-Party Defendant Jannie Dominguez with the Clerk of Court using the CM/ECF system, which will serve notice on all parties of record.

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